

STATE OF MICHIGAN
COURT OF APPEALS

TOBY JACOB RHODES,

Plaintiff-Appellant,

v

CITY OF SOUTHFIELD,

Defendant-Appellee.

UNPUBLISHED

June 26, 2014

No. 314221

Oakland Circuit Court

LC No. 2012-130248-AS

Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing his complaint seeking superintending control. We affirm.

Plaintiff argues the circuit court abused its discretion in dismissing his complaint seeking superintending control. We disagree. Superintending control is an extraordinary remedy that is within the discretion of the court considering the matter. *In re Wayne Co Prosecutor*, 232 Mich App 482, 484; 591 NW2d 359 (1998). “Absent an abuse of discretion, this Court will not disturb the denial of a request for an order of superintending control.” *Id.*

“For an order of superintending control to issue, the plaintiff must show that a clear legal duty has not been performed by the defendant.” *Id.* “[I]f a plaintiff has a legal remedy by way of appeal, the court may not exercise superintending control and must dismiss the complaint.” *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 347; 675 NW2d 271 (2003), citing MCR 3.302(D).

The circuit court properly concluded that plaintiff had a legal remedy by way of appeal. The crux of plaintiff’s argument for superintending control is that the district court improperly ruled that he had violated the terms of his probation and sentenced him as a result. Plaintiff also contends that the district court failed to enter orders relating to its sentences for violating the terms of his probation. However, a review of the district court register of actions, which was attached to defendant’s response to plaintiff’s complaint in the circuit court, reveals that the district court entered several orders following the probation violation hearings. The record reflects that probation violation hearings were held on March 28, 2012, July 23, 2012, and October 10, 2012. The district court entered orders following each probation violation hearing. Moreover, the district court’s orders involving sentences imposed following probation violations were final orders that plaintiff had an appeal of right. See MCR 6.445(H)(1)(a) (in a case

involving a sentence of incarceration, the trial court must advise the probationer that the probationer has a right to appeal, if the underlying conviction occurred as a result of a trial). Therefore, because plaintiff had a legal remedy by way of an appeal, the circuit court properly dismissed his complaint seeking superintending control. MCR 3.302(D); *Shepherd Montessori Ctr Milan*, 259 Mich App at 347.

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood